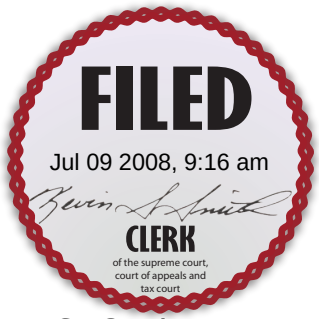


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| CHRISTOPHER CROSS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 73A01-0709-CR-427 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE SHELBY SUPERIOR COURT
The Honorable Jack A. Tandy, Judge
Cause No. 73D01-0608-FA-22

**JULY 9, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Senior Judge**

Christopher Cross appeals his conviction in a bench trial of 1) dealing cocaine as a class A felony; 2) attempted dealing cocaine as a class A felony; 3) possession of cocaine as a class A felony; 4) maintaining a common nuisance as a class D felony; 5) resisting law enforcement as a class A misdemeanor; 6) carrying a handgun without a permit after a felony conviction as a class C felony; and 7) use of a firearm in a controlled substance offense, as well as his adjudication as both an habitual substance offender and an habitual offender. He also appeals the sentence imposed thereon.

We affirm.

Cross raises two issues for our review:

I. Whether there is sufficient evidence to support Cross' convictions of dealing in cocaine, attempted dealing in cocaine, and possession of cocaine, all class A felonies; and

II. Whether the trial court erred in sentencing Cross.

In August 2006, Larry Sizemore assisted the Shelbyville Police Department by setting up a drug transaction involving Sizemore, Cross, and John Mellentine. Sizemore attempted to call Cross, from whom he had bought drugs in the past. When Sizemore reached Cross' voice mail, Sizemore called Mellentine, who told Sizemore he could reach Cross. Mellentine telephoned Cross and told him that Sizemore wanted to purchase $200.00 worth of cocaine.

Cross and Mellentine drove to Sizemore's Shelbyville hotel room. Shelbyville Police Department Officer Bart Smith was parked down the street at the Bear's Den Youth Center, which was about 120 feet from the hotel. When Cross and Mellentine arrived at the hotel, Officer Smith radioed the officers that were hiding in Sizemore's

hotel bathroom. When Cross pulled a bag of cocaine out of his pocket, the police entered the room and yelled, "Police. Down." Tr. at 120.

Cross reached for his waistband, which led Officer Ed Hadley to believe that Cross was reaching for a weapon. Officer Hadley tackled Cross, and the two men fell on the floor. Cross continued to struggle with the officer and reach for his waistband. After subduing Cross, Officer Hadley felt a gun slide down Cross' leg. A subsequent search of Cross revealed the gun and three grams of cocaine. The State charged Cross with multiple counts. Following a bench trial, the court convicted Cross of all counts and adjudicated him to be an habitual substance offender as well as an habitual offender.

Following the sentencing hearing, the trial court "adopted" the following aggravating circumstances set forth in the presentence report: 1) Cross has a history of criminal behavior; 2) Cross is in need of correctional or rehabilitative treatment that can best be provided by commitment to a penal facility; and 3) Cross threatened the life of a witness/co-defendant by means of a letter. Appellant's App. at 46. The court found no mitigating factors, and sentenced Cross to 1) thirty years for dealing in cocaine, 2) thirty years for possession of cocaine, 3) three years for maintaining a common nuisance, 4) one year for resisting law enforcement, and 5) eight years for carrying a handgun without a permit with a prior felony conviction, all sentences to run concurrently.[1] The court enhanced Cross' thirty-year sentence by twenty years for his habitual offender

[1] The trial court merged the conviction for attempted dealing cocaine with the conviction for dealing cocaine.

adjudication, for a total sentence of fifty years.[2] Cross appeals his convictions and sentence.

## I. Sufficiency of the Evidence

Our standard of review for sufficiency of the evidence is well settled. We neither reweigh the evidence nor reassess the credibility of witnesses. *Sanders v. State*, 704 N.E.2d 119, 123 (Ind. 1999). Rather, we consider the evidence most favorable to the verdict and draw all reasonable inferences supporting the ruling below. *Id.* We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *O'Connell v. State*, 742 N.E.2d 943, 949 (Ind. 2001).

### A. Dealing in Cocaine and Attempted Dealing in Cocaine

To convict Cross of class A felony dealing in cocaine, the State had to prove that Cross knowingly or intentionally possessed three grams or more of cocaine with intent to deliver it. *See* Ind. Code § 35-48-4-1. Cross argues there is insufficient evidence to support his convictions of both dealing in cocaine and attempted dealing in cocaine because there is insufficient evidence he intended to deliver the cocaine that he possessed.

In challenges to the sufficiency of evidence for drug dealing, circumstantial evidence showing possession with intent to deliver may support a conviction. *Davis v. State*, 791 N.E.2d 266, 270 (Ind. Ct. App. 2003), *trans. denied*. For example, evidence of

[2]The court imposed no sentence enhancements for the use of a firearm in a controlled substance offense or for the habitual substance offender adjudication.

the illegal possession of a relatively large quantity of drugs is sufficient to sustain a conviction for possession with intent to deliver. *Hazzard v. State,* 642 N.E.2d 1368, 1369 (Ind. 1994). The more narcotics a person possesses, the stronger the inference that he intended to deliver the narcotics and not personally consume them. *Love v. State,* 741 N.E.2d 789, 792 (Ind. Ct. App. 2001). In addition, intent can be established considering the mental state of the defendant, the surrounding circumstances, and the reasonable inferences to be drawn therefrom. *Davis,* 791 N.E.2d at 270.

Here, the evidence reveals that Cross possessed more than three grams of cocaine. In addition, Mellentine testified that Sizemore called him and asked him to call Cross and arrange a drug transaction. Mellentine also testified that he knew that he and Cross were going to Sizemore's hotel room so that Cross could sell Sizemore cocaine. Cross' attack on Mellentine's credibility is nothing more than an invitation for us to reweigh the evidence, which we cannot do. *See O'Connell,* 742 N.E.2d at 949. There is sufficient evidence to support Cross' convictions.

B. Possession of Cocaine

Cross further contends that there is insufficient evidence to support his conviction of possession of cocaine as a class A felony. Indiana Code Section 35-48-4-4 provides that possession of more than three grams of cocaine within 1,000 feet of a youth center is a class A felony. Here, Officer Smith testified that the hotel was about 120 feet from a youth center. Another officer testified that the hotel was approximately 200 feet from a youth center. Both of these distances are well below the 1,000 foot statutory minimum. Cross nevertheless argues that "there should be some specific requirement that the State

show the exact distance." Appellant's Br. at 11. There is, however, no such requirement, and we decline Cross' request that we impose one. We find sufficient evidence to support Cross' class A felony possession of cocaine conviction.

II. Sentence

Cross also argues that the trial court erred in sentencing him. Specifically, he contends that the trial court erred in considering the threatening letters Sizemore and Mellentine received as aggravating factors because there is no evidence that Cross wrote them.

Cross has waived appellate review of this argument because he has failed to cite authority and to make a cogent argument on appeal as required by Ind. App. R. 46(A)(8)(a). *See Simms v. State*, 791 N.E.2d 225, 230 (Ind. Ct. App. 2003).

Waiver notwithstanding, we find no error. The trial court adopted the aggravating factors in the presentence report, which Cross did not challenge at the sentencing hearing. He cannot now challenge the contents of the report on appeal. *See Dillard v. State*, 827 N.E.2d 570, 577 (Ind. Ct. App. 2005), *trans. denied.*

Affirmed.

MAY, J., and VAIDIK, J., concur.